

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

- v. -

JOSEPH PERCOCO, a/k/a “Herb,”
PETER GALBRAITH KELLY, JR., a/k/a “Braith,”
STEVEN AIELLO, and
JOSEPH GERARDI,

Defendants.

No. S2 16 Cr. 776 (VEC)

DEFENDANTS’ PROPOSED QUESTIONS FOR ORAL VOIR DIRE

Pursuant to Rule 24(a) of the Federal Rules of Criminal Procedure, defendants Joseph Percoco, Peter Galbraith Kelly, Jr., Steven Aiello, and Joseph Gerardi respectfully request that the Court include the following questions in its examination of prospective jurors.

A. Introduction

1. Good morning, and welcome to the United States District Court for the Southern District of New York. I am Judge Caproni and I will be the presiding judge at this trial.
2. Let me introduce you to the attorneys who will be trying this case and the defendants. Starting with the Government, the Government is being represented by Assistant United States Attorneys Janis Echenberg, Robert Boone, David Zhou, and Matthew Podolsky. The Government will be assisted by Criminal Investigators with the U.S. Attorney’s Office, Special Agents with the Federal Bureau of Investigation, and paralegal specialists in the U.S. Attorney’s Office.

3. There are four defendants in this case.
4. Defendant Joseph Percoco is represented by Barry Bohrer, Michael Yaeger, Andrew Gladstein, and Abigail Coster of the law firm Schulte Roth & Zabel LLP.
5. Defendant Peter Galbraith Kelly, Jr. is represented by Daniel Gitner, Jun Xiang, Samantha Reitz, and Rachel Berkowitz of the law firm Lankler Siffert & Wohl LLP.
6. Defendant Steven Aiello is represented by Stephen Coffey and Scott Iseman of the law firm O'Connell & Aronowitz.
7. Defendant Joseph Gerardi is represented by Milton Williams and Avni Patel of the law firm Walden Macht & Haran LLP.
8. This is [], who will be assisting in this phase of the trial.

B. Summary of Allegations

9. This is a criminal case. The Government has charged the Defendants with violating certain federal laws. The Indictment itself is not evidence or proof of anything. It simply contains the charges the Government must prove to the jury beyond a reasonable doubt. In order to put some of the questions I will be asking in context, I am going to briefly summarize the charges.
10. The Government has charged two separate schemes.
11. Defendants Joseph Percoco and Peter Galbraith Kelly, Jr., are charged in the first scheme, which relates to an energy company called Competitive Power Ventures ("CPV"). Mr. Percoco was an aide to the Governor of New York, Andrew Cuomo. Mr. Kelly was an executive at CPV. The Government has accused Mr. Percoco of obtaining illegal payments from Mr. Kelly in exchange for the performance of official acts to benefit CPV. Based on that accusation, the

Government has charged Mr. Percoco with four counts: extortion, conspiracy to commit extortion, conspiracy to commit honest services fraud, and bribery. The Government has charged Mr. Kelly with two counts: conspiracy to commit honest services fraud and bribery.

12. Mr. Percoco, along with defendants Steven Aiello and Joseph Gerardi, are charged in a second scheme, which relates to a development company called COR Development. Mr. Aiello and Mr. Gerardi are executives at COR. The Government has accused Mr. Percoco of obtaining illegal payments from Mr. Aiello and Mr. Gerardi in exchange for the performance of official acts to benefit COR Development. In connection with this alleged scheme, the Government has charged Mr. Percoco with four counts: extortion, conspiracy to commit extortion, conspiracy to commit honest services fraud, and the solicitation of bribes. The Government has charged Mr. Aiello and Mr. Gerardi with three counts each: conspiracy to commit honest services fraud, the payment of bribes, and making false statements to federal officers.
13. Mr. Percoco, Mr. Kelly, Mr. Aiello, and Mr. Gerardi have each pled not guilty to these charges and each is presumed innocent of all charges. It is the Government's burden to prove each charge beyond a reasonable doubt.
14. The burden of proof is always on the Government and never shifts to a defendant. Under the U.S. Constitution, a person accused of a crime does not have to testify in his defense or present any witnesses or evidence, and his silence may not be used against him.

15. Under the law, the facts are for the jury to determine and the law is for the Court.

The two areas are separate and distinct. At the beginning of the case and again at the end of the case, I will instruct you on the law and you are required to accept the law as I explain it to you. It will be your job to determine the facts under my explanation of the law.

C. General Questions for Panel

If any prospective juror answers yes to the below questions, the defense respectfully requests that the Court inquire further during the individual questioning.

16. Do you have any hesitation or unwillingness to accept the rules of law that I have stated?

17. Do you have any doubt that you will be able to apply the law as I explain it even if you disagree with the law?

18. Have you ever studied or practiced law or worked in any capacity for a law office such as a private law firm or a government office like the district attorney's office?

19. Have you or has any member of your family or close friend ever worked in law enforcement, for example, as a police officer or a federal agent?

20. Do you have any personal views or experiences with law enforcement that might affect your ability to fairly and impartially evaluate the testimony of the law enforcement officers?

21. You may hear testimony from a witness who has agreed to cooperate with the Government's investigation in this case and who has pled guilty to a number of crimes. The Government has promised this individual that, in exchange for his testimony, the Government will file a letter that this individual hopes will result in favorable treatment when he is sentenced for the crimes he has pled guilty to—

- including crimes unrelated to the allegations in this case. Do you have any opinion about the Government's use of such a witness that might make it difficult for you to be a fair and impartial juror in this case?
22. To your knowledge, have you or do you have any relatives, friends, associates, or employers who have had any dealings with the United States Attorney's Office for the Southern District of New York, defense counsel, or the law firms Schulte Roth & Zabel LLP, Lankler Siffert & Wohl LLP, O'Connell & Aronowitz, or Walden Macht & Haran LLP?
23. Have you or has any member of your family or a close friend ever brought a civil lawsuit or been a defendant or witness in a civil lawsuit?
24. Have you or has any member of your family or a close friend ever appeared as a witness in a criminal case either at a trial or in the grand jury?
25. Have you or has any member of your family or a close friend ever been a victim of a crime?
26. Have you or has any member of your family or a close friend ever been a defendant in a criminal case or been incarcerated?
27. Have you ever worked or volunteered for a political campaign?
28. Are you politically active?
29. If you are selected as a juror in this case, I will instruct you that, under the law, it is permissible for public officials to receive benefits from their constituents as long as they do not agree to perform an official act in return. I will also instruct you that under the law, the crime of bribery requires a promise or agreement to perform an "official act" and that not all actions taken by government officials count as "official

acts.” I will instruct you that, under the law, it is not an “official act” simply for a government official to set up a meeting or a phone call, or to make an inquiry on behalf of a constituent, or to provide information to a constituent, or to refer a constituent to another government official. In other words, not every action a government official might take in favor of a constituent counts as an “official act.”

Do you have any hesitation about being able to follow that instruction?

30. The function of the juror is to decide whether the Government has proved beyond a reasonable doubt the specific charges against a specific defendant. This trial is not a referendum on politics, government, public corruption in general, campaign finance, or the political system—nor is it an opportunity for you to express or vindicate your personal views on those topics. Your sole obligation is to consider the evidence presented against each defendant to determine whether the Government has satisfied its burden of proof beyond a reasonable doubt. Do you have any hesitation about being able to follow this instruction?

31. If you are selected to serve on the jury, I will instruct you that throughout the course of this trial, you must refrain from reading, listening, or watching any news about this case, and also to refrain from any Internet research about this case or any of the parties involved, including myself, the lawyers, the defendants, and any witnesses. I understand that you may be curious, but you must agree to judge this case based only on what you hear in court, and not seek any additional information online or elsewhere. Do you have any hesitation about being able to follow this instruction?

32. Is there anything else that I have not specifically asked you that you think the parties and I should know because it may have some bearing on your ability to serve as a fair and impartial juror?

D. Questions for Individual Prospective Jurors

The defense respectfully requests that the Court address any follow-up from the written questionnaire, address any yes answers to the questions above, and ask each juror to state the following information.

33. Did you read or hear anything about this case today?
34. Where do you live?
35. How long have you lived there?
36. How old are you?
37. How far have you gone in school and what did you study?
38. Are you employed and, if so, where do you work? (If you are not currently working, where did you work most recently?)
39. Please describe what you do or did at your job – what are your specific responsibilities?
40. Are there other people in your household?
41. If you are living with a spouse or partner who is employed, what does he/she do?
42. If you have grown children who are employed, what do they do?
43. Have you ever had a job that involved dealing with regulatory agencies? If so, please tell us about that?
44. Have you ever had a job that required you to interact with government officials? If so, please tell us about that?
45. Have you ever owned your own business?

46. Are you a member of any social, religious, or professional organizations? Which ones?
47. Have you seen or heard anything about former Virginia Governor Robert F. McDonnell and the reversal of his conviction last year, including an episode of 60 Minutes about the case? If yes, what have you seen or heard?
48. Have you ever served as a juror or grand juror?
49. What is your main source for news?
50. What newspapers, magazines, podcasts, radio programs, or television shows do you consume?
51. What websites do you frequently visit?
52. What are your hobbies and interests?
53. Did you recognize anyone in the courtroom today, including fellow prospective jurors?